IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32 (2)(b)

Description of the case.

Civil Writ Petition No. 1320 of 2003 (S/S)
(Old No. 5904 of 2000)

Ashok Kumar Tewari & others ……. Petitioners

Versus

U.P. Senik Punarvas Nidhi through its Secretary,
Raj Bhawan, Lucknow & others.
…….. Respondents

Date of decision: 10th August, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant

- Whether the order/judgment should be sent to the reporters for reporting? (**Yes**)

- Whether the reporters be allowed to see the judgment? (**Yes**)

IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

WRIT PETITION NO. 1320 (S/S) 2003

Ashok Kumar Tewari & others Petitioners.

Versus

U.P. Sainik Punarvas Nidhi through its Secretary,
Raj Bhawan, Lucknow & others. Respondents.

Sh. D.S. Patni, Advocate for the petitioners,
State Counsel of Respondents.

P.C. Pant, J.

1- This Writ Petition has been moved under Article 226 of Constitution of India for writ in the nature of certiorari quashing the order dated 05.09.2000 passed by Respondent No. 5 imposing conditions for revision of pay scales based on recommendations of 5th Pay Commission.

2- Brief facts of the case are that the petitioners are employees working under the U.P. Sainik Punarvas Nidhi (hereinafter referred as Punarvas Nidhi). The Punarvas Nidhi is a charitable Trust constituted under Section 4(12) of Charitable Endowments Act, 1890. The Trust is administered by Management Committee which consists of (a) His Excellency the Governor, (b) The Chief Secretary, G.O.C. In-Central Command (c) Two nominated ex-servicemen officers (d) Two persons having interest in the Welfare of ex-servicemen to be nominated by the Governor (e) One nominated person by the State Government who is interested in the Welfare of ex-servicemen and (f) One representative of

the Ministry of Defence. As such the Punarvas Nidhi is under pervasive control of the State Government and performs the public functions. Before the Punarvas Nidhi Trust is notified vide notification-dated 15.02.1983, it was existing in the name of U.P. Post War Services Reconstruction Fund Trust which got amalgamated in Punarvas Nidhi. Petitioner No.1 to 9 were appointed in the Punarvas Nidhi after the notification dated 15.02.1983 while the rest of petitioners No. 10 to 27 were appointed earlier in Post War Services Reconstruction Fund Trust and later absorbed in the Punarvas Nidhi. The Service conditions of the employees of the Punarvas Nidhi are governed by the Rules of Business which provides that it would be same as that of the State Government Employees for all purposes like revision of Pay, L.T.C., T.A., D.A., Leave Allowances etc. Whenever the State Government revised pay scales of its employee on the basis of the recommendations of earlier Pay Commissions the same pay scales have been made applicable to the employees of Punarvas Nidhi. The 5th pay Commissions recommendations were made applicable by the State Government to its employees with effect from 01.01.1996. The Punarvas Nidhi also made the pay scales applicable to its employees by the impugned order dated 05.09.2000 (Copy Annexure 1 to the writ petition) putting new conditions that the same will be made applicable only if the following targets are achieved as to the yields:-

(i)	Sugar Cane	200 qunital per acre
(ii)	Mustard	2 qunital per acre
(iii)	Wheat	11 qunital per acre
(iv)	Paddy	18 quintal per acre

3- The said condition has been imposed totally ignoring that the yields depend on climate, quality of seeds, rain fall, availability of pesticides etc. The petitioners have alleged that such a new condition for revision of pay scales is not only wholly unreasonable and arbitrary but also discriminatory. The employees of Punaravas Nidhi are working at its headquarter at Lucknow as well as in the fields such as Pathar Chatta (Uttaranchal) etc. By imposing the condition while the employees posted at headquarter have been benefited, those who are posted in the field have been deprived of the revised pay scales. No reason, whatsoever, has been assigned for putting the condition regarding target of achieving of yields in the matter of revision of pay scales. Hence, the Writ Petition.

4- Joint counter affidavit has been filed on behalf of respondent nos. 1 to 5 in which it has been stated that there is separate scheme of administration of the Farm where the petitioners are employed, and none whether in headquarter or town they are not directly under the control of the State Government. Since Punarvas Nidhi is not the Government body, as such, the 5th pay Commission recommendations are not applicable to the employees of Punarvas Nidhi. It is further stated in the Counter Affidavit that the decision of the Management

Committee imposing the questioned condition is valid as the employees of the Farm get their salaries from the earnings of agriculture while the employees at headquarter get their salaries from the grant received from the Central Government. It is further alleged in the counter affidavit that no violation of Rules of business of been done in imposing the condition nor is there any discrimination as against the employees working in the field.

5- I heard learned counsel for the parties and perused the papers and affidavits filed therewith.

6- The short question before this Court is two fold- (A) Whether the U.P. Sainik Punarvas Nidhi is instrumentality of State or not and (B) whether the petitioners working in the field have been wrongly denied the revised pay scales while their counter parts at headquarters have been given the same.

7- As to the members of the Management Committee the facts are not admitted that the grant and aid are received from the Central Government. Annexure-4 to the Writ Petition at its page 3 clearly shows that the service conditions of employees of Punarvas Nidhi are at par with the State Government employees as 2nd part of Rule-9 reads as under-

"The staff will be governed by the service conditions of State Government employees of equal status and for all purposes such as T.A. and D.A., leave, allowances and other facilities like revision of pay and L.T.C., Group Insurance and leave encashment etc. they will be governed by U.P. Government Rules."

Annexure-4 to the Writ Petition is the copy of Rules of business of U.P. Sainik Punarvas Nidhi. In view of the aforesaid rules of business and for the reasons as mentioned above this Court has not doubt that the respondent Punarvas Nidhi is nothing but instrumentality of State as it not only gets grants from Government but also makes all rules of the Govt. servants applicable to its employees and performing public functions.

8- Now I come to the second question whether the Petitioners have been wrongly denied the revision of pay scales. It is clear from annesure-1 dated 05-09-2000 that while implementing the revised pay scale recommended by the 5th pay Commission certain conditions fixing target of yields have been imposed on the employees as mentioned above. This clearly classifies the employees working in the field and those working at the headquarters, while those working in the headquarters have been given the fruits of the recommendations of the 5th pay Commission, the same has been denied to the employees working in the field. Now this Court has to see if the classification is unreasonable and arbitrary. Copy of the impugned order dated 05-09-2000 (Annexure-1 to the Writ Petition) does not assign any reason for imposing such condition, the same appears to be arbitrary. These is one more reason which make the condition imposed in the impugned order unreasonable and that reason is that the crops and yields largely depend on the climatic conditions like rain etc. and to deprive the employees of the revised on that ground is discriminatory. For

giving incentive to the employees working in the filed such kind of classification can be said to be reasonable but not for the purposes of revision of pay scales.

9- For the reasons as described above, this Court holds that the condition of target of yields fixed in the impugned order dated 05-09-2000 for revision of pay scales is illegal and unconstitutional. Therefore, to that extant the impugned order is liable to be quashed.

10- Accordingly, the Writ Petition is allowed as prayed. The conditions relating to fixing targets of yields in the impugned order is held void and quashed. The decision taken by the Management Committee on 18-05-1999 is also quashed. All the employees including the Petitioners will be entitled to the revision of pay scales as sanctioned by the impugned order dated 05-09-2000 without fulfilling the conditions quashed as above. No order as to cost.

Dated: August 10, 2004. **(P.C. Pant,) J.**

S.S.Negi